

1 THE HONORABLE BENJAMIN H. SETTLE
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 COMMANDER EMILY SHILLING, et al.,

10 Plaintiffs,

11 v.

12 UNITED STATES OF AMERICA, et al.,

13 Defendants.

No. 2:25-cv-241-BHS

DEFENDANTS' REPLY IN
SUPPORT OF MOTION TO STAY
PROCEEDINGS PENDING APPEAL
FROM PRELIMINARY INJUNCTION

NOTE ON MOTION CALENDAR:
August 22, 2025

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15 Defendants respectfully submit this reply in further support of their Motion to Stay
16 Proceedings Pending Appeal from Preliminary Injunction (ECF No. 123, "Defs. Stay Mot.").

17 As Defendants explained in their motion, a stay of further district court proceedings until
18 the parties and the Court receive appellate guidance would promote judicial economy and conserve
19 party resources, particularly where, as here, the Supreme Court has issued three intervening
20 decisions that undermine Plaintiffs' claims and request for relief and indicate that Defendants are
21 likely to succeed on the merits in this case. Continuing forward with district court proceedings
22 while Defendants' preliminary injunction appeal is pending would result in needlessly duplicative
23 litigation, potentially unnecessary motion practice, and waste of judicial resources to resolve
24 merits and discovery issues that ultimately may prove to be unnecessary.

25 The Government's request for a stay is warranted particularly because the Ninth Circuit is
26

1 poised to decide the appeal without undue delay. At the time of Defendants' motion, the Ninth
 2 Circuit argument was scheduled for either October 20–24, 2025, or November 3–7, 2025. The
 3 Ninth Circuit has since scheduled argument for the earliest of those dates, October 20, 2025. *See*
 4 Notice of Oral Arg., *Shilling v. United States*, No. 25-2039 (9th Cir. Aug. 10, 2025).

5 In Plaintiffs' Opposition to Defendants' Motion for Stay (ECF No. 126, "Pls. Opp'n"),
 6 Plaintiffs mischaracterize Defendants as being "[u]nsatisfied with the Supreme Court's indefinite
 7 stay of this Court's preliminary injunction." *Id.* at 1. That is not so, especially when at least five
 8 Justices determined that Defendants are likely to succeed on the merits of Plaintiffs' claims. *United*
 9 *States v. Shilling*, No. 24A1030, 2025 WL 1300282 (U.S. May 6, 2025). Plaintiffs take the
 10 puzzling position that the Supreme Court's stay supports their opposition because "preliminary
 11 relief is not available" to them. Pls. Opp'n at 2. But "preliminary relief is not available" to them
 12 because the Supreme Court determined that the government's stay application has shown (1) a
 13 likelihood of success on the merits, (2) a reasonable probability of obtaining certiorari, and (3) a
 14 likelihood of irreparable harm. *See Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam)
 15 (standard for granting a stay by the Supreme Court). Plaintiffs have not cited a single case where
 16 a district court determined that the Supreme Court's stay of the district court's injunction weighed
 17 in favor of moving forward in the district court litigation. *See* Pls. Opp'n at 2-3. Tellingly, in all
 18 three cases that Plaintiffs cite, *Washington v. Trump*, *Kuang v. Dep't of Defense*, and *E. Bay*
 19 *Sanctuary Covenant v. Trump*, the district court granted the Government's stay request pending
 20 the preliminary injunction appeal. The fact that the Supreme Court has expressed doubt about the
 21 merits of Plaintiffs' claims in this case further strengthens the Government's position that a district
 22 court stay is warranted.

23 Plaintiffs also assert that they will suffer "irreparable harm if these proceedings grind to a
 24 halt." Pls. Opp'n at 1. To begin, even if this case presents a close case on the issue of harm, the
 25 Supreme Court has already weighed the relative harm in favor of the government when it stayed
 26 this Court's injunction. *See Hollingsworth*, 558 U.S. at 190 (in "close cases," "the Court will

1 balance the equities and weigh the relative harms"). Moreover, the Supreme Court stayed the
 2 injunction on May 6, 2025 (over three months ago), and Defendants answered the amended
 3 complaint on May 19, 2025 (also over three months ago). The case has not progressed, and it was
 4 only after Defendants moved to formalize the status quo that Plaintiffs claimed "irreparable harm"
 5 that would ensue from a "halt" of the district court proceedings. Thus, this Court should not credit
 6 Plaintiffs' claims of "urgency" and the "continue[d] inflict[ion] of serious harm." *Id.* at 7.

7 Equally unpersuasive is Plaintiffs' argument that "[t]he Ninth Circuit's resolution of the
 8 preliminary injunction appeal will not meaningfully simplify the issues remaining before this
 9 Court." Pls. Opp'n at 5. Defendants showed in their motion that in light of the intervening Supreme
 10 Court stay and its decisions in *United States v. Skrmetti*, 145 S. Ct. 1816 (2025), and *Trump v.*
 11 *CASA, Inc.*, 145 S. Ct. 2540 (2025), it is likely that the forthcoming Ninth Circuit decision (and
 12 any subsequent Supreme Court review) could significantly narrow—or at least guide—further
 13 proceedings in this case. Defs. Stay Mot. at 5-8. Pending before the Ninth Circuit are legal
 14 questions about the appropriate standard of review, military deference, First Amendment,
 15 equitable estoppel, and due process rights. *Id.* at 7-8. Defendants believe that the intervening
 16 Supreme Court cases "undermine[]” Plaintiffs' claims. *Id.* at 2. Plaintiffs, in contrast, argue that
 17 *Skrmetti* is "distinguishable," *CASA* is "wholly inapposite," and Defendants' view of those cases
 18 is "mistaken." Pls. Opp'n at 7-10. The parties' divergent views prove the point. Given that these
 19 conflicting views of the critical legal issues presented in Plaintiffs' case are now before the Ninth
 20 Circuit, it makes little sense for this Court and the parties to expend the resources necessary for a
 21 full presentation of those issues at this time. *See Shilling*, No. 25-2039 (9th Cir.): Opening Br.
 22 (ECF No. 33), Answering Br. (ECF No. 39), Reply Br. (ECF No. 58), Suppl. Auth.: *Skrmetti* (ECF
 23 Nos. 61, 62), Suppl. Auth.: *CASA* (ECF Nos. 63, 64).

24 Because the preliminary injunction standard will require the Ninth Circuit to consider
 25 whether Plaintiffs are "likely to succeed on the merits," *Winter v. Nat. Res. Def. Council, Inc.*, 555
 26 U.S. 7, 20 (2008), it would be far more efficient for the parties to await resolution of the appeal, at

1 which point most (if not all) of the legal issues may be clarified and potentially narrowed, affecting
 2 the potential scope of any further litigation. Further litigation of any remaining legal issues would,
 3 moreover, be better informed by having the benefit of appellate guidance.

4 Similarly, Plaintiffs' contention that the Ninth Circuit's decision will have "little bearing"
 5 on this case is without merit. Pls. Opp'n at 5. If, for example, the Ninth Circuit finds that Plaintiffs
 6 are unlikely to succeed on the merits of the equal protection claim because (1) rational-basis review
 7 applies, per *Skrmetti*; and (2) the Hegseth Policy is supported by a conceivable rational basis, the
 8 decision will have a significant bearing on Plaintiffs' "*actual success*" on the claim. *Id.* (Plaintiffs'
 9 emphasis). Importantly, unlike appeals in a preliminary posture where the "limited scope of review
 10 and the paucity of the factual record on a preliminary injunction application . . . may provide little
 11 guidance as to the appropriate disposition on the merits and will often result in unnecessary delay
 12 to the parties and inefficient use of judicial resources," "these concerns carry less force in this
 13 particular case because the majority of the issues on appeal . . . are predominantly legal issues."
 14 *Washington v. Trump*, Civ. A. No. 25-244 (LK), 2025 WL 1180290, at *3 (W.D. Wash. Apr. 23,
 15 2025) (internal quotation marks and citations omitted). Thus, "the Ninth Circuit's resolution of the
 16 pending appeal will provide significant 'guidance as to the appropriate disposition on the merits,'"
 17 which weighs heavily in favor of a stay. *Id.* (quoting *Sports Form, Inc. v. United Press Int'l, Inc.*,
 18 686 F.2d 750, 753 (9th Cir. 1982)).

19 The Court, therefore, should stay further proceedings pending appeal because a stay will
 20 foster "the orderly course of justice measured in terms of the simplifying or complicating of issues,
 21 proof, and questions of law," without any significant ensuing damage or hardship from the stay.
 22 *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962).

CONCLUSION

For these reasons and the reasons discussed in Defendants' stay motion, Defendants respectfully request that the Court stay the proceedings until Defendants' appeal is resolved.

DATE: August 22, 2025

Respectfully submitted,

BRETT A. SHUMATE
Assistant Attorney General
Civil Division

ALEXANDER K. HAAS
Director, Federal Programs Branch

JEAN LIN
Special Litigation Counsel

/s/ M. Jared Littman
M. JARED LITTMAN
ELIZABETH B. LAYENDECKER
ROBERT C. BOMBARD
Trial Attorneys
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street NW
Washington, DC 20005
Telephone: (202)514-5578
Jared.Littman2@usdoj.gov
Elizabeth.b.layendecker@usdoj.gov
Robert.Bombard2@usdoj.gov
Attorneys for Defendants

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U.S. DEPARTMENT OF
JUSTICE
1100 L Street NW
Washington, DC 20530